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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,109	02/05/2002	James Fontanesi	72957	5750

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EXAMINER

GOTTSCHALK, MARTIN A

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,109

Applicant(s)

FONTANESI, JAMES

Examiner

Martin A. Gottschalk

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Notice to Applicant

1. Claims 21-28 are pending and have been examined. Claims 1-20 have been cancelled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 22-24, 27, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 22, 24, and 27, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). For the purpose of examination, the Examiner will consider the list of items preceding this phrase to merely be examples of a more general type of material to be claimed. Claim 23 depends from claim 22, and is thus indefinite as well.

5. Regarding claim 28, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). For the purpose of examination, the Examiner will consider

the item following this phrase to merely be an example of a more general type of material to be claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle, Jr. et al. (US Pat# 4,916,611) in view of Kirk et al (US Pat# 5,390,238).

A. As per claim 21, Doyle discloses a procedure-based medical services delivery and reimbursement system facilitating long-term treatment management of patients, comprising:

one or more physician information processors for recording patient quality of life, economic, treatment, and payment information from a treating physician's facility (Doyle: col 2, lns 61-68);

at least one central information processor located separate from said one or more physician information processors said central information processor storing multiple treatments for generally accepted protocols that may be administered to patients over a predetermined time duration with respect to a staging of the patient's ailment (Doyle: col 2, lns 40-60);

a communications network for establishing communications between said physician information processors and said central information processor for communicating patient quality of life, economic, treatment, and payment information therebetween (Doyle: col 9, lns 25-35);

said central information processor generating a range of treatments communicated to said one or more physician information processors, allowing the treating physician to select from generally accepted protocols for administration to the patient over the predetermined time duration (Doyle: col 2, lns 47-68 col 5, lns 37-41);

As per the remaining features of claim 21, while the foregoing discussion clearly shows that Doyle addresses issues concerning reimbursement of physician-selected treatments, Doyle fails to explicitly disclose all the features remaining in claim 21. However, these features are well known in the art as evidenced by the teachings of Kirk who teaches

a patient interface in communication with said one or more physician information processors (Kirk: Fig 2, patient reads on "CLIENTS," item 16, physician reads on "DOCTORS"; col 3, lns 48-53)

indicating the administration of a physician selected protocol and a time duration corresponding to the actual administration of treatment to the patient (Kirk: col 3, lns 3-5; Fig 4, items 70, 71, 96, and 94; col 4, lns 8-10);

and

said one or more physician information processors receiving adjustments in the range of treatments (Kirk: col 3, lns 22-24)

by utilizing the patient quality of life, economic, treatment, and payment information with a comparison of the predetermined time duration and the

actual treatment time duration (Kirk: col 5, lns 40-54, the comparison feature reads on "analysis of....medication compliance")

processed at said at least one central information processor (Kirk: col 4, lns 34-46)

for customizing the range of treatments to a reduced set of treatments (Kirk: col 2, lns 16-30; col 2, ln 64 to col 3, ln 12)

to maximize the patient's quality of life and economic conditions after treatment (Kirk: col 1, ln 55-60; col 3, lns 17-19 and lns 53-56).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Doyle and Kirk with the motivation of allowing older person with infirmities to remain in their homes while receiving medical care instead of being forced to go to a nursing home (Kirk: col 1, lns 14-36).

B. As per claim 22, Doyle discloses a system as recited in claim 21, wherein said central information processor stores treatments comprising

radiation,

surgery

chemotherapy disciplines
and the like (Doyle: col 2, lns 45-55)

for generally accepted protocols administered over predetermined time durations
with respect to staging of the ailment.

C. As per claim 23, Doyle discloses a system as recited in claim 22, wherein said
central information processor comprises

access to institutionally approved treatment protocols for storing the treatments
(Doyle: col 2, lns 45-55).

D. As per claim 24, Doyle discloses a system as recited in claim 21, wherein said
central information processor and said physician information processors

establish communication over said communications network for recording a
multiplicity of identified patient treatment outcomes comprising

clinical observations,
complications,
quality of life,
economic impact,

patient satisfaction

and the like

with reference to protocols administered over the predetermined time duration (Doyle: col 2, lns 45-60, i.e. protocols reads on "treatments," clinical observations reads on "diagnosis," economic impact reads on "dollar amounts payable," and all are associated with a multiplicity of patients, which reads on "employees, spouses, and dependents"; col 9, lns 25-35 for the network; col 9, lns 5-19, note further that a multiplicity of patient treatments and outcomes would be recorded by the plurality of treatment providers.).

E. As per claim 25, Doyle discloses a system as recited in claim 21, wherein said central information processor

generating a range of treatments communicated to said one or more physician information processors, allowing the treating physician to select from specific investigational review board approved protocols for administration to the patient over the pre-determined time duration, comprising physician originated input regarding treatment decisions at various points in time (Doyle: col 2, lns 40-68).

F. As per claim 26, Doyle discloses a system as recited in claim 25, wherein said physician originated input comprises

use of prognostic factors to help delineate treatment options (Doyle: col 5, lns 37-44; col 4, lns 37-38).

G. As per claim 27, Doyle discloses a system as recited in claim 21 wherein the predetermined time duration includes

multiple-week treatment regimes

comprising monitoring devices providing a patient interface for

ailment staging considerations,

default options,

conditionals,

timing compliance,

payment requirements (Doyle: col 2, ln 55 to col 3, ln 15)

and the like.

H. As per claim 28, Doyle discloses a system as recited in claim 21, wherein the treatment protocols include

multiple interventions comprising combined treatments (Doyle: col 2, lns 45-55)

such as oncology therapies.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art discloses systems for remote communication and interaction between physicians, patients, and other participants in a patient's health care.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin A. Gottschalk whose telephone number is (571) 272-7030. The examiner can normally be reached on Mon - Thurs 8:30 -6 and alternate Fri 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MG
09/14/2006

Robert Morgan
Patent Examiner
Art Unit 3626